

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SHERMAN L. DAVIS,

No. C 08-01978 CW (PR)

Petitioner,

ORDER LIFTING STAY AND
DIRECTING RESPONDENT TO SHOW
CAUSE WHY THE WRIT SHOULD NOT
BE GRANTED

v.

DERRAL G. ADAMS, Warden,

Respondent.

Petitioner, a state prisoner, has filed this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 containing eleven claims in which he challenges the validity of his state conviction. Petitioner conceded that he had not exhausted his state remedies as to claims one through nine. However, he alleged that he has appealed claims ten and eleven to the California Court of Appeal and the California Supreme Court. Thus, it appeared that Petitioner had filed a mixed petition containing exhausted and unexhausted claims. Exhibit four of Petitioner's habeas petition, entitled, "Notice," asked the Court to stay this case in order to allow him to exhaust claims one through nine in state court. (July 7, 2008 Order at 8-9 (citing Pet'r Ex. 4).) Therefore, on July 7, 2008, the Court granted Petitioner's request for a stay of habeas proceedings pending exhaustion of claims one through nine.

On August 17, 2009, Petitioner filed a state habeas petition form along with an document entitled, "Notice," which states that he has "exhausted all state remedies of the (1-9) previously unexhausted claims." (Notice at 1.)

Before the Court is Petitioner's implied motion to lift the stay.

1 Good cause appearing, Petitioner's motion to lift the stay is
2 GRANTED.

3 The Clerk of the Court shall REOPEN this case and serve a copy
4 of this Order and the original petition and all attachments thereto
5 upon Respondent and Respondent's attorney, the Attorney General of
6 the State of California. The Clerk shall also serve a copy of this
7 Order on Petitioner at his most current address.

8 Respondent shall file with this Court and serve upon
9 Petitioner, within sixty (60) days of the issuance of this Order,
10 an answer conforming in all respects to Rule 5 of the Rules
11 Governing Section 2254 Cases, showing cause why a writ of habeas
12 corpus should not be issued. Respondent shall file with the answer
13 a copy of all portions of the state trial record that have been
14 transcribed previously and that are relevant to a determination of
15 the issues presented by the petition.

16 If Petitioner wishes to respond to the answer, he shall do so
17 by filing a traverse with the Court and serving it on Respondent
18 within thirty (30) days of his receipt of the answer. Otherwise,
19 the petition will be deemed submitted and ready for decision thirty
20 days after the date Petitioner is served with Respondent's answer.

21 Petitioner is reminded that all communications with the Court,
22 whether by way of formal legal motions or informal letters, must be
23 served on Respondent by mailing a true copy of the document to
24 Respondent's counsel.

25 Extensions of time are not favored, though reasonable
26 extensions will be granted. Any motion for an extension of time
27
28

1 must be filed no later than seven (7) days prior to the deadline
2 sought to be extended.

3 IT IS SO ORDERED.

4 Dated: 10/16/09



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

SHERMAN L DAVIS,

Plaintiff,

v.

DERRAL G ADAMS et al,

Defendant.

Case Number: CV08-01978 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on October 16, 2009, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sherman Level Davis
Corcoran State Prison
Prisoner Id D-40369
4B2L-1
P.O. Box 8800
Corcoran, CA 93212

Attorney General
State of California
455 Golden Gate Avenue, #11000
San Francisco, CA 94102

DERRAL G ADAMS, Warden
P.O. Box 8800
Corcoran, CA 93212-8309

Dated: October 16, 2009

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk